IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.278 OF 2004

The Commissioner of Income Tax, Mumbai .. Appellant
V/s
M/s.Hotel Diamond, Mumbai .. Respondents

Mr.R.V.Desai for the Appellant.
Mr.A.V.Jain for the Respondents.

CORAM: S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 12.01.2005.

P.C.:

1. Heard the learned Counsel for the parties. Perused the order passed by the Income Tax Appellate Trubunal, Mumbai, dated 16.7.2002.

2. The learned Counsel for the Respondents has brought to our notice that on the identical substantial question of law, this Court in the case of **Cadell Weaving Mill Company Limited V/s.Commissioner of Income Tax - 249 ITR 265** has come to the conclusion that receiving of an amount in consideration of surrendering of statutory tenancy rights and/or possessory rights is not assessable to tax, within the meaning of Section 10(3) read with Section 53 of the Income Tax Act, 1961.

3. The learned Counsel for the Appellant has submitted that the above-mentioned judgment will not apply in the instant case because in the instant case there is no surrendering of tenancy but the premises were handed over on expiry of tenancy.

4. However, the facts and circumstances of the case indicate that even after expiry of leave and licence agreement on 19th June, 1987, for a number of years thereafter the Respondents were allowed to continue in the premises and the landlord being the co-owner was receiving the rent of the premises from the Respondents even after expiry of the aforesaid leave and licence agreement, as such they were protected licensees under the Bombay Rent Act. On surrendering of tenancy the Respondents had received certain consideration during the previous year relevant to the Assessment Year 1992-1993. Thus the judgment in the aforsaid case of **Cadell Weaving Mill Company Limited** also applies to the instant case. Hence no substantial question of law is involved in this Appeal. Appeal therefore stands dismissed.

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